

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of SHARON K. BLOOD and U.S. POSTAL SERVICE,  
CROSSROADS STATION, Bellevue, WA

*Docket No. 97-2858; Submitted on the Record;  
Issued August 6, 1999*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issue is whether appellant is entitled to a hearing before an Office of Workers' Compensation Programs' hearing representative under 5 U.S.C. § 8124(b)(1).

On December 29, 1995 appellant, a 49-year-old letter carrier, filed a Form CA-1 claim for benefits, alleging that she injured her lower back on December 19, 1995 when she was handed a heavy postage meter, the weight of which exceeded her capacity to carry it. Appellant did not seek medical treatment for her back injury until December 21, 1995, when she was admitted to a hospital emergency room.

Appellant's supervisor submitted a December 29, 1995 statement indicating that on December 21, 1995, she reported to work and informed him that her back was bothering her and that she immediately wanted to consult a physician. The supervisor stated that appellant initially told him she hurt her back on December 19, 1995 by wearing high-heeled boots to work, but stated 20 minutes later that she had hurt her back when she was handed the postage meter. The supervisor indicated that he disbelieved appellant's account that she injured her back when she lifted the meter, which weighed 15 to 18 pounds and that she had left work on December 19, 1995 to go Christmas shopping, when she stated her back was bothering her so much that she had to buy another pair of shoes in which to go shopping.

In a letter to appellant dated February 1, 1996, the Office requested that appellant submit additional evidence in support of her claim. The Office informed her that she had 30 days to submit the requested information.

On February 15, 1996 the Office received several documents from appellant, including emergency room notes dated December 21, 1995, three CA-17 form reports, a handwritten statement explaining the manner in which she injured her back and a photo of the boots which allegedly contributed to her back injury.

By decision dated May 2, 1996, the Office denied appellant's claim on the grounds that the evidence of record failed to establish that she sustained the claimed injury in the performance of duty.

By letter dated May 1, 1997, appellant requested a hearing before an Office hearing representative. Appellant submitted additional medical evidence in support of her request.

By decision dated May 28, 1997, the Office denied appellant's request for a hearing because it was not made within 30 days and she was not as a matter of right entitled to a hearing. The Office stated that appellant's request was further denied on the grounds that the issue in the case could be equally well addressed by requesting reconsideration from the district Office and submitting evidence not previously considered which could establish that an injury was sustained as alleged.

The Board finds that the Office did not abuse its discretion in denying appellant's May 1, 1997 request for a hearing before an Office hearing representative, pursuant to 5 U.S.C. § 8124.

Section 8124(b)(1) of the Federal Employees' Compensation Act,<sup>1</sup> concerning a claimant's entitlement to a hearing before an Office hearing representative, states: "Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary." The Board has held that section 8124(b)(1) is "unequivocal" in setting forth the time limitation for requesting hearings. A claimant is entitled to a hearing as a matter of right only if the request is filed within the requisite 30 days.<sup>2</sup>

The Board has held that the Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made of such hearings and that the Office must exercise this discretionary authority in deciding whether to grant a hearing.<sup>3</sup> Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right for a hearing,<sup>4</sup> when the request is made after the 30-day period for requesting a hearing,<sup>5</sup> and when the request is for a second hearing on the same issue.<sup>6</sup> In these instances the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>7</sup> The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when the request is untimely or made after reconsideration, are a proper interpretation of the Act and Board precedent.<sup>8</sup>

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<sup>1</sup> 5 U.S.C. § 8124(b)(1).

<sup>2</sup> *Tammy J. Kenow*, 44 ECAB 619 (1993); *Ella M. Garner*, 36 ECAB 238 (1984).

<sup>3</sup> *Johnny S. Henderson*, 34 ECAB 216 (1982).

<sup>4</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>5</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>6</sup> *Johnny S. Henderson*, *supra* note 3.

<sup>7</sup> *Id.*; *Rudolph Bermann*, *supra* note 4.

<sup>8</sup> *Herbert C. Holley*, *supra* note 5.

In the present case, the Office on May 2, 1996 issued its decision denying compensation on the grounds that appellant did not sustain an injury in the performance of duty. On May 1, 1997 appellant requested a hearing before an Office hearing representative. By decision dated May 28, 1997, the Office denied appellant's request for a hearing because it was not made within 30 days. The Office exercised its discretion in considering appellant's request, noting that it had considered the matter and determined that the issue in the case could be resolved through the reconsideration process by submitting evidence not previously considered which could establish that an injury was sustained as alleged.

An abuse of discretion can be shown only through proof of manifest error, a manifestly unreasonable exercise of judgment, prejudice, partiality, intentional wrong or action against logic.<sup>9</sup> There is no evidence in the case record to establish that the Office abused its discretion in refusing to grant appellant's hearing request. The Office exercised its discretionary powers in denying appellant's request for a hearing and in so doing did not act improperly.<sup>10</sup>

The decision of the Office of Workers' Compensation Programs dated May 28, 1997 is hereby affirmed.<sup>11</sup>

Dated, Washington, D.C.  
August 6, 1999

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>9</sup> See *Sherwood Brown*, 32 ECAB 1847 (1981).

<sup>10</sup> *Stephen C. Belcher*, 42 ECAB 696 (1991); *Ella M. Garner*, *supra* note 2.

<sup>11</sup> As the appeal was filed on September 7, 1997, the Board lacks jurisdiction to review the Office's May 2, 1996 decision.